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7 *Attorneys for Plaintiffs*

8 INLAND EMPIRE WATERKEEPER and ORANGE COUNTY COASTKEEPER

9 *Additional Plaintiffs' Counsel Listed On Next Page*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 INLAND EMPIRE WATERKEEPER, a
13 program of ORANGE COUNTY
14 COASTKEEPER; ORANGE COUNTY
15 COASTKEEPER, a California non-profit
16 corporation;

17 Plaintiffs,

18 vs.

19 ALPHA MATERIALS, INC., a California
20 corporation,

21 Defendant.

Civil Case No. 8:15-cv-01876-JVS-JCG

22 **NOTICE OF TENTATIVE**
23 **SETTLEMENT**

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8 LAWYERS FOR CLEAN WATER, INC.

9 Caroline Koch (Bar No. 266068)

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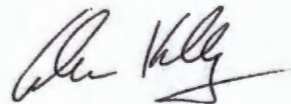
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1 **PLEASE TAKE NOTICE** that the parties have reached a tentative
2 settlement in this proceeding. Their agreement is reflected in the proposed Consent
3 Decree attached to this notice as "Exhibit A," a copy of which is being sent to the United
4 States Department of Justice ("DOJ") and the United States Environmental Protection
5 Agency ("EPA") for a 45-day review period as required under Section 135.5 of Title 40
6 of the Code of Federal Regulations. Plaintiffs will provide the Court with the written
7 notice of commencement of the 45-day review period once Plaintiffs receive that notice
8 from DOJ. At the end of the 45-day review period, Plaintiffs will notify the Court of any
9 objections received from the reviewing agencies and will submit the proposed Consent
10 Decree for consideration and approval by this Court.

11 Should the Court require any additional information, the undersigned will be
12 pleased to provide it upon request

13
14 Dated: August 5, 2016



Colin Kelly
Senior Staff Attorney
Orange County Coastkeeper
Inland Empire Waterkeeper

EXHIBIT A

1 **INLAND EMPIRE WATERKEEPER**

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11 **UNITED STATES DISTRICT COURT**
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15 **COASTKEEPER; ORANGE COUNTY**
16 **COASTKEEPER, a California non-profit**
17 **corporation,**

18 **Plaintiffs,**

19 **v.**

20 **ALPHA MATERIALS, INC., a California**
21 **corporation;**

22 **Defendant.**

Case No.: SACV15-1876 JVS (JCGx)

[Proposed] CONSENT DECREE

(Federal Water Pollution Control
Act, 33 U.S.C. § 1251 et seq.)

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CONSENT DECREE

The following Consent Decree is entered into by and between Plaintiffs Inland Empire Waterkeeper and Orange County Coastkeeper ("Plaintiffs" or "Waterkeeper"), and Defendant Alpha Materials, Inc. ("Defendant" or "Alpha Materials"). The entities entering into this Consent Decree are each an individual "Settling Party" and collectively "Settling Parties."

WHEREAS, Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California;

WHEREAS, Inland Empire Waterkeeper is a program of Orange County Coastkeeper;

WHEREAS, together, Inland Empire Waterkeeper and Orange County Coastkeeper are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of local surface waters;

WHEREAS, Alpha Materials operates a concrete, sand, and gravel storage and delivery facility, located at 6170 20th Street, Riverside, California, 92509 (the "Facility") and is currently regulated by the Storm Water Permit under WDID 836I024440;

WHEREAS, Defendant has proven a commitment to stream sedimentation remediation efforts;

WHEREAS, Waterkeeper alleges that Alpha Materials is operator of the Facility;

WHEREAS, Waterkeeper and Alpha Materials are collectively referred to herein as the "Parties";

WHEREAS, stormwater discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ ("Storm Water Permit"), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA"), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342. These industrial activities include, *inter alia*, unloading trucks transporting sand and gravel; vehicle maintenance, cleaning,

1 and storage; vehicle fueling; transporting raw materials across the site; raw and finished
2 materials storage; weighing aggregate and cement; mixing aggregate, water and cement
3 to form concrete; and loading trucks with concrete.

4 **WHEREAS**, Waterkeeper contends that Alpha Materials' operations at its Facility
5 result in discharges of pollutants into area storm drains, the Santa Ana River, and
6 ultimately the Pacific Ocean (collectively "Receiving Waters") and contends that those
7 discharges are regulated by the Clean Water Act, Sections 301(a) and 402, 33 U.S.C. §§
8 1311(a), 1342.

9 **WHEREAS**, the Storm Water Permit includes the following requirements for all
10 permittees, including Alpha Materials: (1) develop and implement a stormwater pollution
11 prevention plan ("SWPPP"), (2) control pollutant discharges using, as appropriate, best
12 available technology economically achievable ("BAT") or best conventional pollutant
13 control technology ("BCT") to prevent or reduce pollutants, (3) implement BAT and
14 BCT through the development and application of Best Management Practices ("BMPs"),
15 which must be included and updated in the SWPPP, and, (4) when necessary, implement
16 additional BMPs to prevent or reduce any pollutants that are causing or contributing to
17 any exceedance of water quality standards;

18 **WHEREAS**, on August 18, 2015, Waterkeeper served Alpha Materials, the
19 registered agent of Alpha Materials, the Administrator of the U.S. Environmental
20 Protection Agency ("EPA"), the Executive Director of the State Water Resources Control
21 Board ("State Water Board"), the Executive Officer of the Santa Ana Regional Water
22 Quality Control Board, ("Regional Water Board"), and the Regional Administrator of
23 EPA Region IX, with a notice of intent to file suit ("60-Day Notice") under Section
24 505(b)(1)(a) of the of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), alleging
25 violations of the Clean Water Act and the Storm Water Permit and its previous version,
26 Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-
27 DWQ), at the Facility;

1 **WHEREAS**, on November 12, 2015, Waterkeeper filed a complaint against Alpha
2 Materials in the United States District Court, Central District of California (Civil Case
3 No. SACV15-1876 JVS (JCGx)) ("Complaint");

4 **WHEREAS**, Waterkeeper alleges Defendant is in violation of the substantive and
5 procedural requirements of the Storm Water Permit and the Clean Water Act;

6 **WHEREAS**, Alpha Materials denies all allegations and claims contained in the
7 60-Day Notice and the Complaint and reserves all rights and defenses with respect to
8 such allegations and claims;

9 **WHEREAS**, the Parties have agreed that it is in their mutual interest and choose to
10 resolve in full Waterkeeper's allegations in the 60-Day Notice and Complaint through
11 settlement and avoid the cost and uncertainties of further litigation; and

12 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree shall
13 be made in compliance with all applicable Federal and State laws and local rules and
14 regulations;

15 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
16 **SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS**
17 **FOLLOWS**

18 1. The Court has jurisdiction over the subject matter of this action pursuant to
19 Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);

20 2. Venue is appropriate in the Central District Court pursuant to Section
21 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facility at which
22 the alleged violations took place is located within this District;

23 3. The Complaint states claims upon which relief may be granted against
24 Defendant pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365;

25 4. Plaintiffs have standing to bring this action;

26 5. The Court shall retain jurisdiction over this matter for purposes of enforcing
27 the terms of this Consent Decree for the life of the Consent Decree, or as long thereafter
28 as is necessary for the Court to resolve any motion to enforce this Consent Decree.

1 **I. OBJECTIVES**

2 6. It is the express purpose of the Parties entering into this Consent Decree to
3 further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and to
4 resolve those issues alleged by Waterkeeper in its 60-Day Notice and Complaint. In light
5 of these objectives and as set forth fully below, Alpha Materials agrees to comply with
6 the provisions of this Consent Decree and to comply with the Storm Water Permit and all
7 applicable provisions of the Clean Water Act at its Facility. Specifically, the Storm Water
8 Permit requires BMPs be developed and implemented to achieve BAT and the BCT, and
9 to achieve compliance with the applicable water quality standards.

10 **II. AGENCY REVIEW, EFFECTIVE DATE, AND TERM OF CONSENT**
11 **DECREE**

12 7. **Agency Review:** Plaintiffs shall submit this Consent Decree to the United
13 States Department of Justice and the Environmental Protection Agency (collectively
14 “Federal Agencies”) within three (3) business days of the final signature of the Settling
15 Parties for agency review consistent with 40 C.F.R. § 135.5. In the event that the Federal
16 Agencies object to entry of this Consent Decree, the Settling Parties agree to meet and
17 confer to attempt to resolve the issue(s) raised by the Federal Agencies within a
18 reasonable amount of time. Following the Federal Agencies’ review, the Parties shall
19 submit the Consent Decree to the Court for entry.

20 8. **Effective Date:** The Effective Date of this Consent Decree shall mean the day
21 this Consent Decree is fully executed by the Settling Parties.

22 9. **Term of Consent Decree:** This Consent Decree shall terminate three (3)
23 years from the Effective Date unless there is an ongoing, unresolved dispute regarding
24 Alpha Materials’ compliance with the Consent Decree, in which case the Consent Decree
25 will terminate within fifteen (15) days of notice by the Settling Parties that the dispute
26 has been fully resolved.

1 **III. BEST MANAGEMENT PRACTICES**

2 10. **Best Management Practices:** In addition to maintaining the current BMPs
3 at the Facility, Alpha Materials shall develop and implement the BMPs identified herein,
4 as well as any other BMPs necessary to comply with the provisions of this Consent
5 Decree and the Storm Water Permit. Specifically, Alpha Materials shall develop and
6 implement BMPs to prevent and/or reduce contamination in storm water discharges from
7 the Facility consistent with use of the BAT and the BCT and/or in compliance with water
8 quality standards ("WQS").

9 11. Structural and non-structural BMPs detailed in Attachment A of the Consent
10 Decree are incorporated by reference and enforceable under the terms of the Consent
11 Decree.

12 12. **Employee Training Program:** Alpha Materials shall develop and implement
13 an employee training program that meets the following requirements: within thirty (30)
14 days of the Effective Date, Alpha Materials shall develop and implement a training
15 program for employees responsible for implementing the SWPPP, M&RP, and this
16 Consent Decree at the Facility, including any training materials needed for effective
17 implementation of the training program, for the Facility ("Training Program"). The
18 Training Program shall ensure: (1) that there are sufficient number of employees
19 delegated to achieve compliance with the Storm Water Permit and this Consent Decree,
20 and (2) that these employees are properly trained to perform the activities required by the
21 Storm Water Permit and this Consent Decree.

22 12.1. At a minimum, the Training Program shall require the following:

23 12.1.1. **Language.** Alpha Materials shall conduct the Training Program
24 in the language or languages in which all employees
25 participating are fluent;

26 12.1.2. **BMP Training.** Alpha Materials shall train all employees on
27 the BMPs included in this Consent Decree and the SWPPP to
28 ensure that BMPs are implemented effectively and on schedule

1 and structural BMPs are maintained properly. Alpha Materials
2 shall train individual employees on their specific
3 responsibilities in implementing BMPs. The training must
4 include proper handling (collection, storage and disposal) of oil,
5 anti-freeze, and solvents;

6 **12.1.3. Sampling Training.** Alpha Materials shall designate an
7 adequate number of employees necessary to collect stormwater
8 samples as required by this Consent Decree. The Training
9 Program shall include the proper sampling protocols to ensure
10 stormwater samples are properly collected, stored, and
11 submitted to a certified laboratory;

12 **12.1.4. Visual Observation Training.** Alpha Materials shall provide
13 training on how and when to properly conduct visual
14 observations to all employees performing visual observations at
15 the Facility. The training will be provided by a private
16 consultant or representative of the Defendant and shall be
17 repeated as necessary to ensure Storm Water Permit
18 compliance. All new staff will receive this training before
19 assuming responsibilities for implementing the SWPPP.
20 Defendants shall maintain training records to document
21 compliance with this paragraph, and shall provide Waterkeeper
22 with a copy of these records within fourteen (14) days of a
23 written request;

24 **12.1.5. Non-Stormwater Discharge Training.** Alpha Materials shall
25 train all employees at the Facility on the Storm Water Permit's
26 prohibition of non-stormwater discharges, so that employees
27 know what non-stormwater discharges are, that non-stormwater
28 discharges can result from improper surface washing or dust

control methods, and how to detect and prevent non-stormwater discharges;

12.2. **Employees.** All employees at the Facility shall participate in the Training Program within thirty (30) days of the Effective Date and annually thereafter. New employees shall participate in the Training Program within thirty (30) days of their hiring date;

12.3. **Knowledgeable Representative.** The Training Program shall be provided by a private consultant or representative of Alpha Materials who is Qualified Industrial Storm Water Practitioner (QISP) certified and familiar with the requirements of this Consent Decree and the Storm Water Permit;

12.4. **Training Records.** Alpha Materials shall maintain training records to document compliance with this section, and shall provide Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written request; and

12.5. **Integration of Employee Training into SWPPP.** If and when appropriate, Alpha Materials shall integrate any new training requirements resulting from this Consent Decree into the Facility SWPPP. Alpha Materials shall also update the SWPPP, if and when appropriate, to identify the positions responsible for carrying out stormwater management, monitoring, sampling, and SWPPP implementation.

13. **Storm Water Pollution Prevention Plan:** Within thirty (30) days of the Effective Date, Alpha Materials shall amend the Facility SWPPP to incorporate the requirements and BMPs set forth in Section III of the Consent Decree, Section X of the Storm Water Permit, and Attachment A to this Consent Decree, and submit the updated SWPPP to Waterkeeper within ten (10) business days thereafter.

1 13.1. **Waterkeeper's Review of SWPPP.** Waterkeeper shall have thirty (30)
2 days from receipt of the amended SWPPP to propose any changes to the
3 SWPPP. Within thirty (30) days of notification by Waterkeeper of any
4 proposed changes to the SWPPP, Alpha Materials shall consider all of
5 Waterkeeper's changes to the amended SWPPP. Waterkeeper may
6 invoke the meet and confer process in accordance with Paragraph 32 to
7 discuss any continuing concerns. Compliance with the SWPPP, as
8 amended in accordance with this Paragraph, shall, at all times, be a
9 requirement of this Consent Decree.

10 13.2. Alpha Materials shall revise the Facility SWPPP if there are any material
11 changes in the Facility's operations, including, but not limited to,
12 changes to stormwater discharge points or BMPs. These SWPPP
13 revisions shall occur within forty-five (45) days of the changes in
14 operations.

15 **IV. SAMPLING, MONITORING, INSPECTION & REPORTING**

16 14. **Sampling Program - Stormwater:** Defendant shall collect storm water
17 samples from each QSE, as defined in Paragraph 17.1, during the term of the Consent
18 Decree, as described below. For purposes of this Consent Decree, this includes storm
19 water discharge(s) occurring during the Facility's operating hours, or, if storm water is
20 stored onsite prior to discharge, whenever storm water is released outside these hours.
21 Any failure to sample a discharge from each discharge location at the Facility shall be
22 documented and submitted to Waterkeeper within five (5) days of the date a sample could
23 have been collected but was not. Defendant shall analyze the samples for the constituents
24 identified in Table 1.

25 15. **Waterkeeper's Review of Revised M&RP.** Alpha Materials agrees to
26 submit the M&RP to Waterkeeper for review and comment as soon as it is completed but
27 in any event no later than thirty (30) days from the Effective Date of this Consent Decree.
28 Waterkeeper shall provide comments, if any, to Alpha Materials within thirty (30) days

1 of receipt of the M&RP. Alpha Materials shall consider Waterkeeper's comments in
2 order to incorporate into the M&RP. If Alpha Materials decides not to incorporate
3 Waterkeeper's comments into the M&RP, it will provide, in writing, a basis for why it is
4 not incorporating within fourteen (14) days of receiving comments. Any disputes as to
5 the adequacy of the M&RP shall be resolved pursuant to the dispute resolution provisions
6 of this Consent Decree.

7 **16. Additional Revisions to M&RP:** Alpha Materials shall revise the M&RP if
8 there are any changes in a Facility's discharge point(s), if Alpha Materials discovers a
9 change in a Facility's storm water discharge point(s), or as applicable to incorporate
10 sampling or monitoring change in any Action Plan(s). Alpha Materials shall submit any
11 revised M&RP to Waterkeeper for review and comment within fifteen (15) days of
12 completion. Waterkeeper shall provide comments, if any, to Alpha Materials within thirty
13 (30) days of receipt of any revised M&RP, or shall justify in writing why any comment is
14 not incorporated within thirty (30) days of receiving comments. Any disputes as to the
15 adequacy of the M&RP shall be resolved pursuant to the dispute resolution provisions of
16 this Consent Decree.

17 **17. Sampling.** In conducting the sampling set out in Paragraph 14 above, the
18 following storm water monitoring procedures shall be implemented at the Facility:

19 **17.1. Qualifying Storm Event.** Under this Consent Decree, a qualifying
20 storm event ("QSE") is a precipitation event that (a) Produces a
21 discharge for at least one drainage area and (b) Is preceded by 48 hours
22 with no discharge from any drainage area.

23 **17.2. Frequency.** During the life of this Consent Decree, Alpha Materials
24 shall collect stormwater samples from any QSE at the Facility, including
25 the first QSE of the reporting year occurring during the scheduled
26 operating hours defined in the SWPPP.

27 **17.3. Location.** During the life of this Consent Decree, Alpha Materials shall
28 collect samples from all discharge locations at the Facility;

1
2 **17.4. Discharge Locations.** Alpha Materials is encouraged to consolidate
3 discharge points. The current storm water discharge locations at the
4 Facility are:

5 17.4.1. Sampling Point S1 located at the southern end of the property
6 adjacent to the office building and parking area. A drain inlet
7 connects to a concrete drain that extends beneath the side walk
8 before discharging onto 20th Street.

9 17.4.2. Sampling Point S2 is located just north of the driveway on the
10 eastern edge of the property. This point is sampled only if the
11 basin produces a discharge.

12 17.4.3. Sampling Point S3 is located north of Sampling Point S2 on the
13 eastern edge of the property.

14 **17.5. Parameters.** All samples collected pursuant to this section shall be
15 analyzed for the parameters listed in Table 1. Samples shall be analyzed
16 for total recoverable.

17 **17.6. Change of Industrial Activities.** Should industrial processes materially
18 change at the Facility, Alpha Materials shall conduct sampling for any
19 additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to
20 be present in the Facility's stormwater discharges in significant
21 quantities as a result of the changed industrial processes. Alpha
22 Materials shall notify Waterkeeper of any such changes within thirty
23 (30) days of such a change.

24 **17.7. Lab.** Except for pH samples, Alpha Materials shall have all stormwater
25 samples collected pursuant to this Consent Decree delivered to a
26 California state certified environmental laboratory for analysis within the
27 time needed for analysis within laboratory method allowable hold times.
28

1 **17.8. Detection Limit.** The laboratory shall thereafter conduct analysis
2 sufficient to detect individual constituents at or below the values set
3 forth in Table 1.

4 **17.9. Holding Time.** All samples collected from the Facility shall be delivered
5 to the laboratory and analyzed within the holding times required in 40
6 CFR Part 136, excepting pH which will be analyzed onsite, within the
7 time period detailed in the Storm Water Permit, using a calibrated
8 portable instrument for pH in accordance with accompanying
9 manufacturer's instructions.

10 **17.10. Lab Reports.** Alpha Materials shall request the sample-analysis results
11 and associated chain of custody forms be reported to them within
12 fourteen (14) days of laboratory receipt of the sample.

13 **18. Sampling Reduction.** Alpha Materials may discontinue analyzing
14 stormwater samples collected pursuant to this Consent Decree at any discharge
15 location(s) for a constituent listed in Table 1 that is not otherwise required by the Storm
16 Water Permit, if the sample result for the Table 1 constituent is not detected above the
17 limits stated in Table 1 for four (4) consecutive sample results, and Alpha Materials has
18 collected and analyzed the sample pursuant to this Consent Decree.

19 **19. Numeric Limits.** Defendant shall develop and implement BMPs to reduce
20 pollutants in storm water at the Facility to levels below those in Table 1. After October
21 1, 2018 and for the remainder of the life of this Consent Decree, if: (1) storm water
22 samples collected at a sampling location(s) demonstrate an exceedance of four (4) or
23 more Numeric Limit(s) in Table 1 in a single reporting year for a particular drainage area,
24 (2) that drainage area does not include a retention basin capable of retaining the 85th
25 percentile storm, or (3) the drainage area does include a retention basin capable of
26 retaining the 85th percentile storm but the discharge occurred as a result of precipitation
27 that does not exceed the Design Storm, Defendant shall comply with the action plan
28 requirements of paragraph twenty (20) through twenty-one (21) for solely the drainage

area(s) where the exceedances occurred ("Action Plan").

Table 1

| Contaminant | Numeric Limit (All but pH expressed as mg/L) |
|----------------------------|---|
| Total Suspended Solids | 100 |
| Oil and Grease (O&G) | 15 |
| Chemical Oxygen Demand | 120 |
| Total Recoverable Aluminum | 0.75 |
| Total Recoverable Iron | 1.0 |
| Total Recoverable Zinc | 0.260 |
| Total Recoverable Lead | 0.170 |
| pH | 6.5 to 8.5 s.u. |

20. **Action Plan for Table 1.** After October 1, 2018 and for the remainder of the life of this Consent Decree, Defendant shall submit a plan for reducing and/or eliminating the discharge of pollutants if any sampling for any contaminant demonstrates an exceedance of four (4) or more Numeric Limit(s) in Table 1 in a single reporting year for a particular drainage area ("Action Plan"). Discharges from the Facility occurring as a result of precipitation that exceeds the 85th percentile storm ("Design Storm") shall not trigger the requirement for Defendant to prepare an Action Plan. In any year that an Action Plan is required, it shall be submitted by the following July 1.

20.1. Each Action Plan submitted shall include at a minimum: (1) the identification of the pollutant(s) discharged in excess of the Numeric Limit(s); (2) an assessment of the source of each pollutant exceedance; (3) the identification of additional BMPs, including treating storm water prior to discharge from the Facility, that will be implemented to achieve compliance with the Numeric Limit(s); and (4) time schedules for implementation of the proposed BMPs.

1 20.2. The time schedule(s) for implementation shall ensure that all BMPs are
2 implemented as soon as possible, but in no case later than October 1
3 (prior to the start of the next Wet Season).

4 20.3. If structural BMPs are proposed, and agreed to between the Parties,
5 which require agency approval, then Defendant shall contact
6 Waterkeeper to request an extension of the deadline, if necessary, to
7 implement the structural BMPs. Waterkeeper's consent to Defendant's
8 requested extension shall not be unreasonably withheld. Anytime an
9 Action Plan is completed after Waterkeeper's review, as set forth in
10 Paragraph 21 below, Defendant shall also revise its M&RP and SWPPP
11 as applicable within thirty (30) days.

12 21. **Waterkeeper Review of Action Plan:** Waterkeeper shall have thirty (30)
13 days from receipt to propose revisions to the Action Plan. However, if Waterkeeper
14 notifies Alpha Materials within thirty (30) days of receipt of the Action Plan that it is
15 unable to provide comments within thirty (30) days, Waterkeeper shall have an additional
16 fifteen (15) days to propose revisions to the Action Plan. Within thirty (30) days of
17 receiving Waterkeeper's proposed revisions, Alpha Materials shall consider each of
18 Waterkeeper's recommended revisions to the Action Plan and accept them or timely
19 request to meet and confer, in accordance with this Consent Decree.

20 21.1. Alpha Materials shall implement the Action Plan(s) adopted pursuant to
21 this Consent Decree as an obligation of this Consent Decree.

22 21.2. Alpha Materials shall diligently file and pursue all required local agency
23 applications for permits and/or approvals for the BMPs included in any
24 Action Plan.

25 21.3. Within thirty (30) days after BMPs set forth in an Action Plan pursuant
26 to this Consent Decree are implemented, Alpha Materials shall amend
27 the Facility SWPPP to include all BMP revisions or additions not
28 otherwise already implemented and included in the SWPPP and shall

1 provide Waterkeeper with a copy of such revised SWPPP.

2 22. **Site Inspections.** During the Term of this Consent Decree, Alpha Materials
3 shall permit representatives of Waterkeeper to perform up to one (1) physical inspection
4 per year of the Facility during operating hours ("Site Inspection"). Waterkeeper shall
5 provide Alpha Materials three (3) business days notice in advance of such Site
6 Inspections. Waterkeeper shall comply with all safety instructions provided to
7 Waterkeeper by Alpha Materials staff during all Site Inspections. During Site
8 Inspections, Waterkeeper shall be allowed to inspect and sample any stormwater
9 discharges, logs, and take photos and/or videos.

10 23. **Data Reporting:** During the Term of this Consent Decree, Alpha Materials
11 shall provide Waterkeeper with a copy of all laboratory analyses and rain gauge data
12 related to compliance with this Consent Decree within ten (10) days of Alpha Materials'
13 receipt of such data.

14 24. **Document Provision:** During the Term of this Consent Decree, Alpha
15 Materials shall provide Waterkeeper with a copy of all documents and communications
16 related to water quality submitted to the Regional Water Board, the State Water Board,
17 and/or any Federal, State, local agency, county, or municipality. Such documents and
18 reports shall be transmitted to Waterkeeper concurrently as they are sent to the agencies
19 and/or municipalities. Any correspondence related to water quality received by Alpha
20 Materials from any Federal, State, local agency, county, or municipality shall be provided
21 to Waterkeeper via email within three (3) business days of receipt by Alpha Materials.

22 **V. ENVIRONMENTAL MITIGATION, LITIGATION FEES AND COSTS,**
23 **STIPULATED PENALTIES, COMPLIANCE MONITORING AND**
24 **INTEREST**

25 25. **Environmental Mitigation Project:** To remediate environmental harms
26 resulting from allegations in the Complaint, Alpha Materials agrees to make a payment of
27 Ten Thousand Dollars (\$10,000) to the Rose Foundation for Communities and the
28 Environment to fund environmental project activities that will benefit the Southern

1 California Bight and its watershed. The payment shall be made within ten (10) days of
2 the entry of this Consent Decree by the Court payable to the "Rose Foundation for
3 Communities and the Environment" and delivered via certified mail, overnight delivery.
4 Alpha Materials shall provide Waterkeeper with a copy of such payment at the time it is
5 made.

6 **26. Waterkeeper's Litigation Costs:** To reimburse Waterkeeper for its
7 investigation fees and costs, expert/consultant fees and costs, reasonable attorneys' fees,
8 and other costs incurred as a result of investigating and filing the lawsuit, and negotiating
9 this Consent Decree, Alpha Materials shall pay a total of One Hundred Fourteen
10 Thousand Dollars (\$114,000). The payment of Twelve Thousand Five Hundred Dollars
11 (\$12,500) shall be made within ten (10) days after of the end of the 45-day Federal
12 Agencies review period described in Paragraph 7 above or within ten (10) days of the
13 date the Federal Agencies inform the Court that they have no objections to entry of this
14 Consent Decree, whichever is sooner. If the Federal Agencies have commented
15 negatively or objected to entry of this Consent Decree, the payment shall be made within
16 ten (10) business days of the approval and entry of the Consent Decree by the Court. The
17 remainder of the litigations costs will be made in equal payments of Four Thousand Two
18 Hundred Twenty-Nine Dollars and Seventeen Cents (\$4,229.17) due on the first of the
19 month for a period of twenty-four (24) months beginning October 1, 2016. All payments
20 shall be payable to: "Orange County Coastkeeper" and delivered by wire transfer to:
21 Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

22 **27. Stipulated Penalties:** In the event Waterkeeper believes that Alpha
23 Materials has missed any deadline specified in the Consent Decree, Waterkeeper shall
24 provide written Notice to Defendant of such missed deadline. Defendant shall have ten
25 (10) business days from receipt of such notice to respond to Waterkeeper and, if
26 necessary, cure such delinquency. If Defendant fails to respond and, if necessary, cure
27 such alleged delinquency within ten (10) days of receipt of Waterkeeper's notice, then
28 Defendant shall make a stipulated payment of Five Hundred Dollars (\$500) for the

1 missed deadline identified in Waterkeeper's Notice. Payments made pursuant to this
2 paragraph shall be made within thirty (30) days, payable to "Rose Foundation for
3 Communities and the Environment" and delivered via certified mail, overnight delivery,
4 or wire transfer to: 1970 Broadway, Suite 600, Oakland, California, 94612-2218, with a
5 confirmation copy to Waterkeeper. Any disputes over whether a deadline was missed
6 shall be resolved pursuant to the dispute resolution provisions of this Consent Decree.

7 **28. Compliance Monitoring and Oversight:** Alpha Materials agrees to
8 partially defray Waterkeeper's monitoring of Alpha Materials' compliance with this
9 Consent Decree in the amount of Two Thousand Dollars (\$2000) per year, totaling Six
10 Thousand Dollars (\$6000). Provided that Federal Agencies have not commented
11 negatively on or objected to this Consent Decree, the payment shall be made within ten
12 (10) business days following the conclusion of the 45-day Federal Agency review period.
13 If the Federal Agencies have commented negatively or objected to entry of this Consent
14 Decree, the payment shall be made within ten (10) business days of the approval and
15 entry of the Consent Decree by the Court. The payment shall be made via wire transfer or
16 check, made payable to: "Orange County Coastkeeper" and delivered by certified mail or
17 overnight delivery, unless payment via wire transfer, to: Orange County Coastkeeper,
18 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

19 **29. Action Plan Payments:** If Defendant is required to submit an Action Plan to
20 Waterkeeper pursuant to this Consent Decree, Defendant shall make an Action Plan
21 payment made payable to: "Orange County Coastkeeper," and shall deliver such payment
22 by certified mail or overnight delivery, unless payment via wire transfer, to: Orange
23 County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.
24 Payment shall be made contemporaneous with the submittal of the Action Plan. The
25 Action Plan payments shall be made as follows:

26 **29.1. Action Plan Payment.** If an Action Plan is required pursuant to
27 Paragraphs 19-20, above, Defendant shall make an Action Plan Payment
28 of Six Thousand Dollars (\$6000).

1 **VI. DISPUTE RESOLUTION**

2 30. The Court shall retain jurisdiction over this matter for the life of the Consent
3 Decree for the purposes of enforcing its terms and conditions, and adjudicating all
4 disputes among the Settling Parties that may arise under the provisions of the Consent
5 Decree. The Court shall have the authority to enforce this Consent Decree with all
6 available legal and equitable remedies, including contempt.

7 31. If a dispute under this Consent Decree arises or the Parties believe that a
8 breach of this Consent Decree has occurred, they shall follow the following procedure:

9 31.1. **Meet and Confer.** A Party to this Consent Decree shall invoke the
10 dispute resolution procedures of this Section by notifying all other
11 Settling Parties of the matter(s) in dispute. The Parties shall schedule a
12 meet and confer in good faith (either telephonically or in person) within
13 ten (10) days from the date of the notice. The Settling Parties may elect
14 to extend this time in an effort to resolve the dispute without court
15 intervention.

16 31.2. If the Settling Parties fail to meet and confer, or cannot resolve a dispute
17 through the informal meet and confer process, the Settling Parties agree
18 to request a settlement meeting or conference before the Magistrate
19 Judge assigned to this action. The Settling Parties agree to file any
20 waivers necessary for the Magistrate Judge to preside over any
21 settlement meeting or conference. In the event that the Settling Parties
22 cannot resolve the dispute within sixty (60) days of the initial settlement
23 meeting or conference with the Magistrate Judge, the Settling Parties
24 agree that the dispute may be submitted for formal resolution by filing a
25 motion before the United States District Court for the Central District of
26 California. The Settling Parties agree to request an expedited hearing
27 schedule on the motion.
28

VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

32. **Waterkeeper's Release:** Waterkeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors and assigns releases Alpha Materials, its officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns, agents, attorneys and other representatives, from and waives all claims raised in the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint up to the Effective Date.

33. **Alpha Materials' Waiver and Release of Waterkeeper:** Alpha Materials, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns release Waterkeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns from, and waive all claims which arise from or pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint up to the Effective Date.

34. Nothing in this Consent Decree limits or otherwise affects Waterkeeper's rights to address or take any position that they deem necessary or appropriate in any formal or informal proceeding before the State Board, Regional Board, EPA, or any other judicial or administrative body on any matter relating to Defendant's compliance with the Storm Water Permit or the Clean Water Act occurring or arising after entry of this Consent Decree.

VIII. MISCELLANEOUS PROVISIONS

35. **No Admission of Liability:** Neither this Consent Decree, the implementation of additional BMPs or any payment pursuant to the Consent Decree shall constitute or be construed as a finding, admission, or acknowledgement of any fact, law, rule, or

1 regulation. Defendant maintains and reserves all defenses it may have to any alleged
2 violations that may be raised in the future.

3 36. **Execution in Counterparts:** The Consent Decree may be executed in any
4 number of counterparts, all of which together shall constitute one original document.
5 Telecopy, email of a .pdf signature, and/or facsimile copies of original signature shall be
6 deemed to be originally executed counterparts of this Consent Decree.

7 37. **Signatures:** The Parties' signatures to this Consent Decree transmitted by
8 facsimile or electronic mail transmission shall be deemed binding.

9 38. **Construction:** The language in all parts of this Consent Decree shall be
10 construed according to its plain and ordinary meaning, except as to those terms defined in
11 the Storm Water Permit, the Clean Water Act, or specifically herein. The captions and
12 paragraph headings used in this Consent Decree are for reference only and shall not affect
13 the construction of this Consent Decree.

14 39. **Authority to Sign:** The undersigned representatives for Waterkeeper and
15 Alpha Materials each certify that he/she is fully authorized by the party whom he/she
16 represents to enter into the terms and conditions of this Consent Decree.

17 40. **Integrated Consent Decree:** This is an integrated Consent Decree. This
18 Consent Decree is intended to be a full and complete statement of the terms of the
19 agreement between the Settling Parties and expressly supersedes any and all prior oral or
20 written agreements, covenants, representations and warranties, express or implied, oral or
21 written, of the Parties concerning the subject matter of this Consent Decree.

22 41. **Severability:** In the event that any provision, paragraph, section, or sentence
23 of this Consent Decree is held by a court to be unenforceable, the validity of the
24 enforceable provisions shall not be adversely affected.

25 42. **Choice of Law:** This Consent Decree shall be governed by the laws of the
26 United States.

27 43. **Full Settlement:** This Consent Decree constitutes a full and final settlement
28 of this matter.

1 **44. Diligence:** Alpha Materials shall diligently file and pursue all required permit
2 applications for the structural BMPs and shall diligently procure contractors, labor, and
3 materials needed to complete all structural BMPs by the required deadlines.

4 **45. Effect of Consent Decree:** Compliance with this Consent Decree does not
5 mean Alpha Materials is complying with the Storm Water Permit, Clean Water Act, or
6 any other law, rule, or regulation.

7 **46. Negotiated Agreement:** The Parties have negotiated this Consent Decree,
8 and agree that it shall not be construed against the party preparing it, but shall be
9 construed as if the Parties jointly prepared this Consent Decree, and any uncertainty and
10 ambiguity shall not be interpreted against any one party.

11 **47. Modification of the Agreement:** This Consent Decree, and any provisions
12 herein, may not be changed, waived, or discharged, or terminated unless by a written
13 instrument, signed by each of the Parties and approved by the Court.

14 **48. Assignment:** Subject only to the express restrictions contained in this
15 Consent Decree, all of the rights, duties and obligations contained in this Consent Decree
16 shall inure to the benefit of and be binding upon the Parties, and their successors and
17 assigns. Alpha Materials shall notify Waterkeeper within ten (10) days of any
18 assignment, in conformity with the paragraph below.

19 **49. Mailing of Documents to Waterkeeper/Notices/Correspondence:** Any
20 notices or documents required or provided for by this Consent Decree or related thereto
21 that are to be provided to Waterkeeper pursuant to this Consent Decree shall be, to the
22 extent feasible, sent via electronic mail transmission to the e-mail addresses listed below
23 or, if electronic mail transmission is not feasible, via certified U.S. Mail with return
24 receipt, or by hand delivery to the following address:

1 Inland Empire Waterkeeper
2 c/o Orange County Coastkeeper
3 Attention: Colin Kelly
4 3151 Airway Avenue, Suite F-110
5 Costa Mesa, California 92626
6 E-mail: colin@coastkeeper.org

7 Unless requested otherwise by Alpha Materials, any notices or documents required
8 or provided for by this Consent Decree or related thereto that are to be provided to Alpha
9 Materials pursuant to this Consent Decree shall, to the extent feasible, be provided by
10 electronic mail transmission to the e-mail addresses listed below, or, if electronic mail
11 transmission is not feasible, by certified U.S. Mail with return receipt, or by hand
12 delivery to the addresses below:

13 Alpha Materials, Inc.
14 Attention: Brian Martin Oaks & Donald Marshall Oaks
15 5334 Agate Street
16 Riverside, CA 92509
17 Email: brian.alphamaterials@live.com

18 Notifications of communications shall be deemed submitted on the date that they
19 are emailed, or postmarked and sent by first-class mail or deposited with an overnight
20 mail/delivery service. Any changes of address or addressees shall be communicated in
21 the manner described above for giving notices.

22 50. **Impossibility of Performance:** No Party shall be considered to be in default
23 in the performance of any of its obligations under this Consent Decree when performance
24 becomes impossible due to circumstances beyond the Party's control, including without
25 limitation any act of God, act of war or terrorism, fire, earthquake, and flood.
26 "Circumstances beyond the Party's control" shall not include normal inclement weather,
27 economic hardship, or inability to pay. Any Party seeking to rely upon this Paragraph
28 shall have the burden of establishing that it could not reasonably have been expected to
avoid, and which by exercise of due diligence has been unable to overcome, the
impossibility of performance. The Settling Parties shall exercise due diligence to resolve
and remove any force majeure event. Delay in compliance with a specific obligation

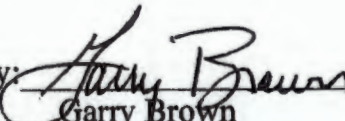
1 under this Consent Decree due to force majeure as defined in this paragraph shall not
2 excuse or delay compliance with any or all other obligations required under this Consent
3 Decree.

4 The Parties hereto enter into this Consent Decree, Order and Final Judgment and
5 submit it to the Court for its approval and entry as a final judgment.

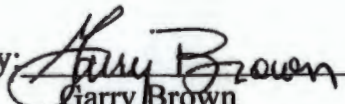
6 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree
7 as of the date first set forth below.

8
9 APPROVED AS TO CONTENT

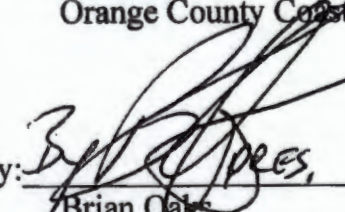
10
11
12 Dated: August 4, 2016

By: 
Garry Brown
Inland Empire Waterkeeper

13
14
15
16 Dated: August 4, 2016

By: 
Garry Brown
Orange County Coroner

17
18
19
20 Dated: August 4, 2016

By: 
Brian Oaks
Alpha Materials, Inc.

1 APPROVED AS TO FORM

2 ORANGE COUNTY COASTKEEPER
3 INLAND EMPIRE WATERKEEPER

4
5 Dated: August 4, 2016

6 By: 

Colin Kelly
Attorney for Plaintiffs

7
8
9
10 Dated: August 4, 2016

11 By: 

Chris M. Amantea
Attorney for Defendant

12
13
14 IT IS SO ORDERED.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 Dated: _____

18 _____
James V. Selna

ATTACHMENT A

1
2
3 1. Within 30-days of the effective date of the consent decree, implement the
4 following source controls and/or remedial measures:

5 1.1. Store all fluids in the maintenance area on secondary containments
6 (including but not necessarily limited to hydraulic fluid, motor oil, grease, spent oil
7 filters, and antifreeze);

8 1.2. Rearrange the storage of maintenance area fluids to maximize roof coverage;

9 1.3. Obtain and use drying racks or drain boards to direct drips from vehicles and
10 their components while being maintained into a container for reuse or proper disposal.

11 1.4. Obtain and locate spill kits at any location where a fluid spill is possible
12 (particularly but not necessarily limited to the maintenance and fueling areas);

13 1.5. Obtain and place drip pans under any leak-prone portions of trucks when
14 parked for longer than one shift (including but not necessarily limited to engines and
15 transmissions);

16 1.6. Prevent storm runoff from flowing into and out of the maintenance area by
17 some device such as "speed bump" berms or cut-off trenches;

18 1.7. Increase removal of concrete and water flowing from the truck wash area
19 into the sump next to the main gate so that these materials are never present during storm
20 events;

21 1.8. Determine the capacities of the secondary containments provided for the
22 additive tanks at the batch plants and the smaller Diesel fuel tank in relation to the
23 Industrial Storm Water General Permit ("the permit") requirements; if found to be
24 inadequate, make plans to enlarge them;

25 1.9. Maintain the piles in the raw materials storage area at no higher than 8 ft, as
26 specified in Fugitive Dust Rule 403 to be the limit allowing for proper dust control unless
27 a water truck can drive onto a pile;

1 1.10. Isolate the raw materials storage area from the channels carrying hillside
2 runoff water by normally keeping gaps in the berms along the channels closed and only
3 reopening them temporarily if necessary to work in the channels; and

4 1.11. Cease use of the off-site fire hydrant for dust suppression water supply.

5 2. Within 3 months of the effective date of the consent decree, develop a
6 conceptual design for a comprehensive stormwater management system that maximizes
7 the use of source and retention controls to avoid completely or minimize stormwater
8 discharges from site areas with industrial activities. In the development process, Alpha
9 Materials is encouraged to assess and select all options to reduce the cost and increase the
10 performance of the management system, including, without limitation:

11 2.1. Source controls achieving "no exposure" of industrial materials and
12 activities to rainfall and runoff, as defined by the permit (2014 permit Appendix 2);

13 2.2. Additional source controls reducing exposure of industrial materials and
14 activities to rainfall and runoff, even if no exposure is infeasible;

15 2.3. Construct concrete catch basin adjacent to the office building and employee
16 parking lot to capture and pump stormwater to a retention basin;

17 2.4. Directing stormwater runoff generated throughout the production area, as
18 well as water flowing from the truck wash, into areas where it will infiltrate the soil and
19 evaporate or can be captured for dust control, considering, without limitation,
20 mechanisms such as regrading, berm construction, and pumping;

21 2.5. Directing stormwater runoff generated throughout the raw materials storage
22 area into areas where it will infiltrate the soil and evaporate or can be captured for dust
23 control, considering, without limitation, mechanisms such as regrading, berm
24 construction, and pumping, sufficient to retain an 85th percentile storm event;

25 2.6. Only use used vehicle entrance and exit point in the raw materials storage
26 area during non-rain events;

1 2.7. Enlarging any secondary containment found not to comply with permit
2 requirements; and

3 2.8. Consolidating drainage to a single discharge point for efficiency and cost
4 saving if runoff treatment is necessary.

5 2.9. Upon completion of the above assessments, determine the retention
6 capability of the proposed facilities in terms of the rainfall quantity from which the runoff
7 production is expected to be retained on-site without discharge. If this quantity is less
8 than the volume of runoff produced by an 85th percentile storm event, as determined
9 from local, historical rainfall records, develop a conceptual design for a runoff treatment
10 system for the balance between runoff quantity retained and runoff quantity resulting
11 from an 85th percentile storm event.

12 3. Within 60 days of the effective date of the consent decree, draft and submit to the
13 Waterkeeper for review and comment an operations and maintenance manual for the
14 overall stormwater management system. The Waterkeeper shall have 30 days from
15 receipt to comment on the manual. Alpha Materials shall accept Waterkeeper's
16 recommendations, if any, or respond within 30 days of receipt why recommendations
17 have not been accepted. Any unresolved issues shall be considered by the parties under
18 the consent decree's dispute resolution procedure.